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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.444/2004

APPELLANT
(In Jail) — Lakhanlal Sahu, S/o Asadhuram Sahu, aged 34 years, occupation, Agriculturist, R/o Village Pendrawan, Police Chowki, Bishrampuri, P.S. Keshkal, Tahsil Kondagaon, Distt. Central Bastar (C.G.)

Vs

RESPONDENT — State of Chhattisgarh Through: P.S. Keshkal, Distt. Cenral Bastar (C.G.)

Present:

Mr. Sankalp Jaiswal, Advocate for the appellant.

Mr. S. Yadav, Dy. Govt. Adv. for the respondent-State.

ORAL JUDGMENT

(10th August, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentences dated 26th March, 2004 passed by learned Special Judge, S.C.S.T. Act, Bastar at Jagdalpur in Sessions Trial No.8/04 whereby learned Special Judge has convicted the appellant under Sections 450 & 376 (1) of the IPC & Section 3 (1) (12) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to undergo R.I. for 3 years and to pay a fine

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of Rs.1,000/-; R.I. for 7 years and to pay a fine of Rs.3,000/- and R.I. for 3 years and to pay a fine of Rs.2,000/- respectively with usual default clauses.

Case of the prosecution, in brief, is that at about 10 pm on 29.10.2003 the prosecutrix was sleeping in her room along with her children, her husband Maluram had gone to cattle market Karhibadar, Dhamtari and her mother-in-law & sister-in-law, who were present in the house, were sleeping in another room. The accused entered her room, caught hold of the prosecutrix and when she tried to shout he threatened her not to shout and inserted cloth in her mouth, forcibly raped her and thereafter fled from there. The incident was narrated by the prosecutrix to her sister-in-law in the night itself, both of them went in search of the accused, however, by that time the accused had already left the place. The prosecutrix narrated the incident to her Jeth Rajaram also. On the next date, a meeting was convened in the village by the prosecutrix where the accused confessed his guilt in writing. After return of Maluram, husband of prosecutrix, the report was lodged in the Police Outpost Vishrampuri on 1.11.2003.

Statement of accused was recorded in which he has taken a defence that he had the sex with the prosecutrix with her consent

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

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and in fact, he had gone to her home on being called by her. However, since her sister-in-law & mother-in-law had seen her, therefore, the report was lodged after several days. He has further stated that he was made to sign in the piece of paper under duress. However, no witness has been examined by the appellant in his defence.

Learned Special Court relying upon the statement of the prosecutrix, which is corroborated by the statement of Chaiti Bai (PW-3) and further relying upon the extrajudicial confession made by the appellant before PW-4 Dalsai Paraste & PW-5 Chandanram and on the document of Ex.P-1 being confession statement written by the appellant has held the appellant guilty of above offences and convicted & sentenced him as mentioned herein above.

Learned counsel for the appellant submits that version of the prosecutrix is highly improbable and the same cannot be accepted. The prosecutrix is a grown-up lady and mother of two children. The offence is alleged to have been committed in the room of prosecutrix at about 10.00 p.m. when she was sleeping in her room with her children, at the time of incident her mother-in-law & sister-in-law were also present in the home and in these circumstances it is highly improbable that the accused would forcibly enter in the room of the prosecutrix after breaking open the door and commit rape. Material

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

discrepancies are present in the statement of the prosecutrix made before the court, in her diary statement of Ex.D-1 and police report of Ex.D-2. In the court this witness has stated that the accused entered in her room by brecking open the door, whereas, in the police report she has stated that on the date of incident she forgotten to lock the door of her room before sleeping and she has contradicted this portion of her statement in the report. The fact that she left the room open is suggestive of her consent. Further more, she has alleged that during the incident her bangles were broken and she had made struggle to free herself from the clutches of the accused, but no corresponding injuries were found on her person. Even the lady doctor has not been examined to prove the medical report of the prosecutrix. Looking to the above circumstances the defence of the accused appears to be more probable, however, this aspect has been ignored by the trial court. Reliance is placed on the judgment of Hon'ble Supreme Court in the matter of **State of Karnataka Versus Mapilla P.P. Soopi** reported in **(2003) 8 Supreme Court Cases 202.**

On the other hand, learned counsel for the State submits that so far as the delay in lodging the FIR is concerned, the trial court has elaborately dealt with this aspect of the defence and has categorically held that the delay in lodging the FIR is always not

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

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fatal and where the prosecution explains the delay with probable reasons, the same cannot be a reason to disbelieve the prosecutrix version. It was further contended that the prosecutrix has categorically alleged that she has been ravished by the appellant against her wishes in her room and the statement of the prosecutrix is duly corroborated by the statement of Chaiti Bai (PW-3) as also from the extrajudicial confession of the appellant himself, which has been proved by Dalsai (PW-4) and Chandanram (PW-5). Version is also established from the document of Ex.P-1, a note signed by the appellant himself in which it has been mentioned that he has raped the prosecutrix.

I have heard learned counsel for the parties. I have perused the evidence available on record including the impugned judgment.

The prosecutrix has been examined as PW-2. She has deposed before the court that on the date of incident her husband had gone to cattle market. After closing the room she slept in her room. Around 10.00p.m. in the night Lakhan came to her room at that time she was asleep, Lakhan put a piece of cloth in her mouth and thereafter took out her clothes and did her (कर दिया) and thereby raped her honour. She could not shout as he pushed cloth in her neck and pressed her neck. She went weeping to her sister-in-law Chaiti

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	 Bai (PW-3) and narrated the incident to her. Thereafter both of them searched Lakhan, however, they could not find, as he was hiding somewhere. She also narrated the incident to her Jeth Rajaram. On the next date of incident her Jeth went to call his brothers. A meeting was convened in the village, however, in the meeting Lakhan did not come. After return of her husband on Friday, she narrated the incident to him also. She reported the matter to Panchayat and thereafter she went along with villagers to lodge the report in Vishrampuri Outpost. She was medically examined. In the cross-examination she has admitted that the door cannot be opened unless it is opened from inside. On the date of incident the door was not broken and only after the incident the door was broken. She has mentioned that she had not mentioned in her report of Ex.D-1 or in her diary statement of Ex.D-2 that she had forgotten to lock the door from inside and the accused entered in her room after breaking open the door and if this fact is mentioned in her report of Ex.D-1 or in her diary statement of Ex.D-2, she does not know the reasons. She has admitted that she is acquainted with the appellant since before, however, accused did not come to her home and she was not in the talking terms with the accused nor the accused was a frequent visitor of her house. She has further stated that at the time of	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

incident both her children were sleeping on her both sides; however, they did not wake up even during struggle. During struggle she did not sustain any injury over her person. Her bangles were broken during the struggle. However, she did not sustain any injury over her hands because of breaking of bangles. She has denied the suggestion that she had any relationship with the accused since before and because of that she opened the door. She has denied that the act of intercourse was committed with her consent and she lodged the report because incident was seen by her sister-in-law.

Chaiti Bai (PW-3) has stated that her Bhabhi i.e. the prosecutrix sleeps in a separate room, whereas, she and her mother sleep in other room. On the date of incident while she was sleeping in her room, the prosecutrix came to her weeping and narrated about the incident. Thereafter panchayat was convened and in the said panchayat the prosecutrix has narrated the incident. She did not go to the Panchayat. In the cross-examination she has stated that in the verandah there is a gate and after opening that gate one is required to open the another gate and then only one will reach to the room of the prosecutrix. All the gates including the gate of verandah were closed before sleeping. She has also stated that she does not know how Lakhan entered in the room of the prosecutrix.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

However, she has stated that she saw that the gate of room of prosecutrix was broken. She did not hear the sound of breaking open the door, as she was in sound sleep.

Dalsai Paraste (PW-5) & Chandanam (PW-5) are the witnesses of Panchayat, who have stated that a panchayat was convened at the instance of the prosecutrix & the accused and on enquiry the prosecutrix has stated that accused committed rape on her at 8.30 p.m. Accused has also confessed his guilt that he committed rape on her around 8.30 p.m. Admission of the appellant was recorded in Ex.P-1 in which the accused put his signature.

In the matter of State of Karnataka Vs. Mapilla P.P. Soopi (Supra) in the identical situation where the prosecutrix, who was living in a house with her children and other adult nearabout, was subjected to rape and others could see only when the accused was walking away. The above fact coupled with the fact that there were no injuries on the body of the prosecutrix to indicate any forceful assault on her, the Hon'ble Supreme Court has expressed its agreement with the finding of the High Court and reached to the conclusion that the prosecution has failed to establish its case.

If we closely scrutinize the statement of the prosecutrix (PW-2) and Chaiti Bai (PW-3), sister-in-law of the prosecutrix, the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

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circumstances narrated by the prosecutrix does not inspire confidence for the reasons that even according to the admission of Chaiti Bai (PW-3) before reaching to the room of the prosecutrix the accused required to open three doors i.e. door of verandah, thereafter door of another room and then only he can reach near the room of the prosecutrix and PW-3 has clearly stated that before sleeping they had closed all the three doors and in these circumstances we are unable to infer as to how the accused reached up to the room of the prosecutrix without waking the prosecutrix or any inhabitant of the house. Apart from this there are material discrepancies in the account given by the prosecutrix regarding the manner in which accused entered her room. In the FIR and diary statement the prosecutrix has claimed that she forgot to close the door from inside on the date of incident, whereas, she has contradicted this part of her statement in her deposition before the court and she has claimed that appellant entered by breaking open the door. She has further stated that she was raped on the cot on which she was sleeping along with her two infant children, who were sleeping on her both the sides, but during the commission of rape by the accused, both the children continued to sleep and did not awake. This version also appears to be highly improbable. Further looking to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the age of prosecutrix, who is admittedly 25 years old and further considering that on her own admission as a result of struggle her bangles were broken but no corresponding injuries were caused to her on her hands also makes the version of the prosecutrix doubtful.

If the delay in lodging the FIR i.e. the delay of nearly 3 days is considered in the light of the conduct of the prosecutrix, the same attains significance. There is evidence of convening of Panchayat in the village at the instance of the prosecutrix and the appellant, as stated by Dalsai Paraste (PW-4). However, the prosecutrix has stated that in the said panchayat, the appellant did not participate, whereas, Dalsai (PW-4) & Chandanram (PW-5) have stated that Lakhan participated in the panchayat, he confessed his guilt, his version was recorded and he put his signature. However, the fact that the accused was made to sign his confession statement written by his family members makes the defence of the accused probable that he was forced by the villagers to sign the same and it was not voluntary. PW-4 Dalsai Paraste had deposed that the incident of rape was committed at 8.30 p.m., as told by the prosecutrix & Ex.P-1 also mentions the time as 8.30 p.m. However, the prosecutrix (PW-2) & Chaiti Bai (PW-3) have given the time as 10.00 p.m. Discrepancy in time is significant. If the time is taken to be 8.30 p.m., the version

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of the prosecutrix & her sister-in-law (PW-3) that they and other inhabitants were sleeping becomes improbable.

Therefore, this court is of the opinion that version given by the prosecutrix before the court does not inspire confidence and the conviction of the appellant based on the statement of prosecutrix and her sister-in-law cannot be sustained.

In the result, the appeal of the appellant succeeds. Conviction of the appellant under Sections 450 & 376 (1) of the IPC & Section 3 (1) (12) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentences imposed under those sections are hereby set aside. The appellant is acquitted of the above charges. He be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-